IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19592 of 2006
With
Civil Application No. 12200 of 2006
With
Civil Application NO. 11643 of 2006
With
Special Civil Application No. 19593 of 2006
With
Civil Application No.12201 of 2006
With
Civil Application No. 11644 of 2006
With
Special Civil Application No. 19594 of 2006
With
Civil Application No. 12202 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE SUGAR FEDERATIONLTD., & 1 - Petitioner(s)
Versus
UNION OF INDIA SERVED THRO' THE SECRETARY & 2 - Respondent(s)

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Appearance :

Special Civil Application No. 19592 of 2006

Mr. K.S.Nanavati, Senior Advocate with Mr. Keyur Gandhi, for M/s. NANAVATI ASSOCIATES for the Petitioners.

Mr.S.N.Shelat, Senior Advocate with Mr. S.I.Nanavati, Senior Advocate with Mr. Saurin Mehta and Mr. Vivek Manpara, advocates for M/s. Nanavati and Nanavati Advocates for respondent nos. 1 and 2.

Mr. S.N.Soparkar, Senior Advocate with Mr. Amar Dave and Mr. Mehul Vakharia, Advocates for respondent no. 3.

Special Civil Application No. 19593 of 2006.

Mr. K.S.Nanavati, Senior Advocate with Mr. Keyur Gandhi, for M/s. NANAVATI ASSOCIATES for the Petitioners.

Mr.S.N.Shelat, Senior Advocate with Mr. S.I.Nanavati, Senior Advocate with Mr. Saurin Mehta and Mr. Vivek Manpara, advocates for M/s. Nanavati and Nanavati Advocates for respondent nos. 1 and 2.

Mr. S.N.Soparkar, Senior Advocate with Mr. Amar Dave and Mr. Mehul Vakharia, Advocates for respondent no. 3.

Special Civil Application No.19594 of 2006

Mr. K.S.Nanavati, Senior Advocate with Mr. Keyur Gandhi, for M/s. NANAVATI ASSOCIATES for the Petitioners.
Mr.S.N.Shelat, Senior Advocate with Mr. S.I.Nanavati, Senior Advocate with Mr. Saurin Mehta and Mr. Vivek Manpara, advocates for M/s. Nanavati and Nanavati Advocates for respondent nos. 1 and 2.

Mr. Navin Pahva Advocates for respondent no. 3.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 20/11/2006

ORAL JUDGMENT

These petitions have been preferred challenging the action of the Central Government taken under section 3 of the Jute Packaging Material (Compulsory Use in packaging commodities) Act, 1987 (hereinafter referred to as the Act of 1987). By this notification dated 24th July, 2006, it is made compulsory that 100% of production of food grains as well as sugar are required to be packed in jute packing material only.

2. An important question of law has arisen for adjudication by this Court as to whether the notification issued by the Central Government under sub-section (1) of section (3) of the Act of 1987 which prescribes that 100% production of food grains as well as sugar required to be packed in jute material only, is arbitrary and whether such decision has been taken by considering the factors which are not referred in section 3 as well as section 4 of the Act of 1987 ?

3. I have heard the learned Senior Advocate Mr. K.S.Nanavati for the petitioners , who has mainly submitted that the impugned notification dated 24th July, 2006 has been issued by the Central Government

for the jute year 2006-2007 (that is, from 1st July,2006 to 30th June,2007) which is at Annexure “A” to the memo of the petition, is patently illegal, and de hors the provisions of the Act, 1987. Factors required to be considered prior to issuance of notification under section 3 of the Act, 1987 are referred in sections 3 and 4 thereof. These factors have not been considered, on the contrary, extraneous factors have been considered and therefore, the impugned notification deserves to be quashed and set aside. It is stated by the learned Senior Advocate Mr. Nanavati for the petitioners that as per the impugned notification, 100% production of food grains and sugar are required to be packed in jute material. This has given resultant effect into a huge import of jute from neighbouring countries like Bangladesh, Nepal etc. In the year 1987, there was import of 54 tonnes of jute, whereas in the year 2004-2005, it has gone very high, that is, to 1,15,600 tonnes. There cannot be a decision by the Central Government which gives encouragement to import. It is further stated by the learned counsel for the petitioners that batching oil used in jute bags is harmful for the health of human beings. Food grains and sugar which are now compulsorily to be packed in jute bags gets

contaminated due to batching oil and affect the health of the consumers. A detailed report has been given by the Jute Commissioner that batching oil used in jute bags is harmful to the health of human beings. Therefore, these factors ought to be considered before fixing 100% usage of jute bags by sugar producers. It is also contended by the learned counsel for the petitioners that the department of Food and Public Distribution of the Central Government has also given report that compulsory jute packing norms should be reduced to 50%. This will cause reduction in the expenditure to the tune of Rs. 475 crores to the Central Government. Likewise, several other departments like department of Chemicals and Petrochemicals, Ministry of Textiles, as representatives of Ministry of Finance have recommended for reduction in use of jute packing material. It is also stated by the learned counsel for the petitioners that as per section 4, Standing Advisory Committee (“SAC” for short) has been constituted. It represents various departments in the Ministry of Central Government. These experts are considering, various factors as stated in sub-section (2) of section 4 of the Act of 1987. As per the SAC, for the jute year 2006-2007, it was

suggested, after considering all the factors which are referred to in sub-section (2) of section 4 of the Act of 1987, that 75% of food grains and 70% of sugar be packed in jute bags. Thus, the aforesaid percentage of the total production of the respective commodities is required to be packed in jute material. Various statistical data and opinions have been considered which are referred in the minutes of the 14th meeting of SAC constituted under the Act of 1987 on 5th May, 2006. These, details are at Annexure “H” to the memo of the petition. It is stated by the learned counsel for the petitioners that this advice has not been followed by the Central Government and that the Central Government has brushed aside report/advice of SAC for extraneous reasons. The learned Counsel for the petitioners has also taken this Court, in great details, to the movements of the files. The original files were also produced before this Court by Union of India and the Court has perused the original files which were also shown to the learned counsel for the petitioners. It is also stated by the learned counsel for the petitioners that the only reason given by the Central Government for not to follow the advice of SAC as constituted under the Act of 1987 is that “in view of the

commitments of UPA Government to national common minimum programme and in continuation with the policy retained during the last jute year", 100% jute packing material is required to be used by food grains and sugar industries. Thus, the factor considered by the Central Government is the national common minimum programme and the jute policy of the year 2005. The learned counsel for the petitioners stated that there is nothing in the national common minimum programme or in the jute policy of the year 2005 that 100% production of sugar and food grains are required to be packed in jute material only. On the contrary, these are the extraneous considerations, looking to the provisions of sections 3 and 4 of the Act of 1987. The learned counsel for the petitioners has drawn attention of this Court to the statement of objects and reasons of the Act of 1987, especially upon para-3 thereof, on the following sentence "As such, it is not proposed to make packing in jute packaging material compulsory on all commodities or class or classes of commodities or their entire production." Thus, it was not the intention to make compulsory that the entire production of a particular commodity is required to be packed in jute packaging material. It is also

stated by the learned counsel for the petitioners that the decision making process of issuance of the notification is wrong and de hors the provisions of the Act of 1987. All the relevant factors which were considered by statutorily constituted body under section 4, cannot be brushed aside by the Central Government without any reasons. There must be reasons on the file, though no speaking order is required to be passed by the Central Government. Looking to the original file, there are no reasons on the file for brushing aside the advice given by the statutorily constituted body under section 4 of the Act. On the contrary, on extraneous grounds, the decision has been taken by the Central Government for 100% use of jute packaging material, i.e. food grain and sugar. It is not in the interest of people at large. It is also contended by the learned counsel for the petitioners that the decision taken under sub-section (1) of section 3 has not been laid before the Parliament though Parliament was in session. The notification is dated 24th July, 2006 and upto 30th August, 2006, the Parliament was in session. The decision taken under sub-section (1) of section 3 of the Act of 1987 should be laid before the Parliament at an earliest opportunity. It is also stated by the

learned Senior counsel for the petitioners that the domestic manufacturing of jute is sufficient to cater the domestic need therefore, reserve market should not be given to the jute industries. It is also submitted by the learned counsel for the petitioners that even Intra-Ministerial committee had initially made reservation upto 70-75% for sugar and food grains respectively. The reasons given in the notification dated 24th July, 2006 are nothing but parrot-like reproduction of provisions of section 3 which is not correct looking to the original file and the note of Textile Ministry approved by Cabinet Committee on Economic Affairs (CCEA). Thus, relevant factors have not been considered at all and extraneous factors have been considered and what is considered is concealed in the notification. Thus, the Central Government has acted arbitrarily and the decision taken under sub-section (1) of section 3 of the Act of 1987 is ultra vires the Act, 1987. It is also stated by the learned counsel for the petitioners that even if it is assumed that the impugned notification is quasi legislative, then also judicial review is permissible, if the decision making process is de hors the provisions of the Act,1987 and if it is found arbitrary, and based upon

extraneous considerations. The learned counsel for the petitioners has also placed reliance upon several decisions, one of them is in the case of **Dalmiya Cement (Bharat) Ltd. And another vs. Union of India and others reported in (1996) 10 SCC, 104** and it is submitted that as per para-31 thereof, “competing right to carry on business guaranteed to a citizen or person is also to be protected. In the clash of competing rights, of socio-economic justice, of the producers of agricultural commodities and of the individual right of a citizen to carry on trade or business, the latter yields the paramount social right. However, a balanced view has to be struck by the Central Government and directing the use of jute packaging material at the percentage of jute bags to be used for compulsory packing of commodities. It is also stated by the learned counsel for the petitioners that looking to the provisions of section 3 of the Act of 1987, percentage of usage of jute material ought to be decided looking to the facts of each case and this process ought to be done every year, that is, once it is fixed at 100%, it cannot be said that for all time to come, this percentage ought to be continued. If such a reason is given for

continuation of 100% use of jute packaging material, then it is a breach of section 3 of the Act of 1987 because every year is a separate unit (Jute year). Every year, statistical data will be different i.e. export, import, production, sale, need etc. It is stated by the learned counsel for the petitioners that in the year 1987, the Standing Advisory Committee constituted under section 4, had taken a decision for 100% use of jute packaging material and therefore, the notification was issued under section 3 for 100% use of jute packaging material. Looking to the facts of the present year, i.e. jute year 2006-2007, SAC has recommended for 70% and 75% of jute packaging material for sugar and food grain, but without considering the factors as stated in sections 3 and 4, the Central Government has brushed aside the advice of the statutorily constituted body only on the political grounds, that is, commitment to UPA Government and on the ground of last year's jute policy. Neither of the reasons, are as per sections 3 and 4 of the Act of 1987. Political reasons are no reasons in the eye of law and last year's jute policy cannot be a reason because every year fresh decision is to be taken under sections 3 and 4 of the Act of 1987. Thus, it is stated by the learned counsel for

the petitioners that the impugned notification deserves to be quashed and set aside. The learned counsel for the petitioners has also relied upon several judgments, one of them is (2006) 3 SCC, 434, especially for the reason that the decision taken by the Central Government is not a legislative decision, but it is execution of statutory power based upon factors referred to in sections 3 and 4 of the Act of 1987. In past also, several writ petitions were preferred being Special Civil Application Nos. 12615, 11239 and 11274 of 2000, wherein also, decision taken by the Central Government was quashed and set aside vide judgment and order dated 19th June, 2006. Letters Patent Appeals have been preferred but no stay has been granted by this Court. It is also stated by the learned counsel for the petitioners that additional reasons have been given in the affidavit-in-reply filed by the Central Government. These reasons cannot support the decisions which have already been taken by the Central Government vide impugned notification dated 24th July, 2006. The affidavit-in-reply cannot supplement the reasons to the impugned notification. There must be such reasons on the file itself. Looking to the facts of the present case, no such reasons are there on the file which are stated

in the affidavit-in-reply. It is also stated that the notification is to be placed before the Parliament. Though, Parliament was in session, the impugned notification has not been placed before the Parliament. Nonetheless, this is not giving any immunity from the judicial review. For the aforesaid proposition of law, the learned counsel for the petitioners has also relied upon several judgments which are referred hereinafter in this judgment. It is also stated by the learned counsel for the petitioners that in Special Civil Application no. 19594 of 2006, the petitioner's members are carrying on their trade and business activities within State of Gujarat. They are members of the petitioner association and they are directly affected by the decision taken by the Central Government under section 3 of the Act of 1987. Therefore, this Court has territorial jurisdiction. The cause of action has arisen within the State of Gujarat for the members of the petitioner association having their business activities in the State of Gujarat. List of members of the association in the State of Gujarat has already been given with further affidavit of the petitioner association. It is a registered association and therefore, the petitioner has locus

to file the petition bearing Special Civil Application No. 19494 of 2006. Thus, it is stated by the learned counsel for the petitioners that the decision taken under sub-section (1) of section 3 of the Act of 1987 imposes 100% of total production of food grains and sugar which is required to be packed in a jute packaging material, which is illegal and dehors the provisions of the Act of 1987 and against the advice of the SAC constituted under section 4 of the Act of 1987 and such a decision has been taken for extraneous considerations and reasons and against the advice of SAC and therefore, it deserves to be quashed and set aside.

4. I have heard the learned Senior Counsel Mr. Mihir Joshi for the petitioners in another petition and he has accepted the contentions canvassed by the learned Senior Advocate Mr. K.S.Nanavati and additionally submitted that this Court had passed orders dated 14th June, 2006 as well as 12th October, 2006 which have not been complied with by the respondents. Hence, the respondents should not be heard unless they comply with the direction given by this Court. It is stated by the learned Senior counsel Mr. Joshi that no satisfaction has been

recorded by the Central Government as per section 3(1) of the Act of 1987 on the original file. No affidavit has been filed by the persons who have taken the decision on behalf of the Central Government. No facts have been referred pointing out the satisfaction and for brushing aside the advice given by the statutorily constituted committee under section 4 of the Act of 1987. Parrot-like repetition has been referred in the impugned notification of the provisions of section 3 of the Act of 1987. It is also stated by the learned counsel that out of total seven members of the Standing Advisory Committee, five members have recommended for the reduction in the percentage of total production which is to be packed in jute material. Even looking to the draft of intra-ministerial committee's report, recommendations of SAC has been accepted, but it is only Textile Ministry which has brushed aside the advice of SAC only on the ground of commitment of UPA Government (on the basis of common minimum programme) and on the basis of last year's jute policy. Both these are extraneous considerations to the Act of 1987. Common minimum programme is nothing but intra-party agreement between several parties which cannot be the basis for the departure from the advice of SAC. The

learned counsel for the petitioners has taken this Court in detail, to the common minimum programme and the jute policy and pointed out that there is nothing in these two documents which mandates 100% use of jute packaging material. Thus, it is stated by the learned counsel that the decision taken by the Central Government is not in the public interest and is against the Act, 1987. Use of Jute packaging material is hazardous to health, it encourages import of jute and ignores savings of public exchequer (As per one of the members of SAC, if this percentage is reduced to 50%, there will be saving of Government money by Rs. 475 crores). There is no transparency in the decision taken by the Government. When there is a total prohibition, State has to show why lesser reduction is not to be applied and is not beneficial. The process of shifting from 70-75% to 100% leads from restriction to total prohibition. Therefore, the impugned notification deserves to be quashed and set aside.

5. It is stated by Senior Advocate Mr. Mihir Thakore, on behalf of petitioner in another writ petition that looking to the provisions of section 3 of the Act of 1987, it is the duty vested in the

Central Government, before issuance of the impugned notification, to consider the factors which are referred to in sections 3 and 4 of the Act of 1987. The satisfaction must be arrived at by the Central Government keeping in mind these factors. If there is any other consideration, other than the parameters stated in sections 3 and 4 of the Act, weighed with the Central Government for arriving at satisfaction, it will vitiate the decision and it can be labelled as illegal and violative of the Act of 1987. Looking to the original file, the only reason given by the Central Government is the commitment to UPA Government and last year's jute policy. None of these two considerations have been referred in sections 3 and 4 of the Act of 1987. On the contrary, the Central Government could have referred the matter back to SAC. He has also accepted the arguments advanced by the learned Senior Advocates Mr. K.S.Nanavati and Mr.Mihir Joshi and has submitted that the impugned decision taken by the Central Government under sub-section (1) of section (3) of the Act of 1987is arbitrary, unreasonable and violative of the Act of 1987and therefore, it deserves to be quashed and set aside.

6. I have heard the learned Senior Counsel Mr. S.N.Shelat and learned Senior Advocate Mr. S.I.Nanavati for the respondent Central Government who have mainly submitted that the decision taken by the Central Government is a policy decision and therefore, is not justiciable. The power of fixation of percentage of use of jute-packaging material is not available to courts. Nonetheless, the decision taken by the Central Government is in consonance with the provisions of section 3 of the Act of 1987. In fact, this decision is a legislative action and is not a quasi legislative decision much less an executive decision. He has also read over the statement of objects of the Act of 1987 and pointed out that India is an agro-based country and therefore, the protection of the jute industry is very much necessary and for their protection, the whole Act has been enacted. Constitutional validity of the Act has already been upheld by the Hon'ble Supreme Court in the case of **Dalmiya Cement (Bharat) Ltd. vs. Union of India and others reported in (1996) 10 SCC, 104.** It is also stated by the learned counsel Mr. Shelat that the decision is taken under sub-section (1) of section 3. There is also a provision

that such a decision is required to be placed before the Parliament. The Parliament has power to modify the said decision and therefore, such a decision under sub-section (1) of section 3 of the Act is under direct control of the Parliament. It is also stated by the learned Senior Counsel that in the last jute year 2005-2006 also, 100% of production of food grains and sugar was required to be packed in jute material. The advice given by the Standing Advisory Committee is not binding to the Government and therefore, the Central Government can take deviation from the recommendation of the SAC. It is also stated by the learned Senior Counsel that the note of Cabinet Committee on Economic Affairs was considered by the Central Government and therefore, the whole note should be treated as reasons for arriving at the satisfaction of 100% usage of the jute packaging material. It is also stated by the learned Senior counsel for the respondents that common minimum programme and the jute policy 2005 are not irrelevant considerations. It is also stated that once the grounds considered by the Central Government are found to be relevant, its sufficiency is not to be evaluated by this Court. It is also stated that total prohibition is also permissible in the eye of law

more so, when jute production is higher in the year 2006. It is further stated that Jute and Jute Textile Control Order 2000 regularises the quota of jute bags. Likewise, to prevent health hazards, maximum three percentage of batching oil is permitted for manufacturing jute bags. The imported jute is not allowed to be used for the packaging material for food grains and sugar producers. The export of food grains and sugar is permissible in other material than jute. It is stated by the learned Senior Counsel that that fixation of percentage of the production of the material to be packed in jute material is a policy decision. Once decision making process is found to be true and correct, the court should not go in search of goals to be achieved or in search of better policy and even if two views are possible, the court should not take another view of the matter than what is taken by the Central Government. The learned Senior Counsel Mr. Shelat has also relied upon the following authorities in support of his arguments.

(1) AIR 1984 SC 1543

(2) 1992(2) SCC 343

(3) AIR 2002 SC 322

(4) AIR 1981 SC 2138

(5) AIR 1996 SC 1356

(6) AIR 2002 SC 350

(7) AIR 1987 SC 1802

(8) 1990(3) SCC 223

(9) 2001(3) SCC 635

(10) AIR 1974 SC 366

(11) AIR 2004 SC 3800

(12) 1996(10) SCC 104

(13) AIR 2005 SC 2534

(14) 1992(4) SCC 167

(15) 2002(2) GLH 748

It is also submitted by the learned Senior advocate that what is imported from Bangladesh and other neighbouring countries is another type of jute. Therefore, it cannot be said that the decision taken by the Central Government from 100% usage of jute material is giving inspiration to import. It is stated that ad-interim relief has been given by this Court to petitioners, but when the matters are taken up for final hearing, there is no question of any contempt whatsoever arising, especially when the Central Government has already preferred a civil application for the modification of ad-interim relief granted by this Court.

7. I have also heard the learned Senior Advocate Mr. S.I.Nanavati for the respondents who has mainly submitted that the petitioner of Special Civil Application No. 19594 of 2006 cannot file the petition before this Court looking to the address given in the cause title of the petition. It is an association working at Delhi and therefore, it ought to have filed a petition in the High Court at Delhi. The list of members has not been given in the original petition, but the same has been given in the rejoinder. Even it is not stated as to when the petitioner association was registered. He has also adopted the arguments canvassed by the learned Senior Advocate Mr. S.N.Shelat. Lastly, it is submitted by the learned Senior Advocate that in the present year, the production of jute has gone up therefore, 100% reservation for usage of jute packaging material in food grains and sugar is necessary.

8. I have also heard the learned Senior Advocate Mr. Saurabh Soparkar for Indian Jute Mills' Association, the newly added party who has mainly submitted that looking to the prayers in the petition, even it is the say of the petitioner that

some percentage of jute packaging material may be fixed by the Central Government. Thus, the basic need of reservation of percentage of total production to be packed in jute packaging material is not opposed by the petitioners nor by the Standing Advisory Committee. What is done by the Central Government in the present case is that they have increased the percentage of usage of jute packaging material. Thus, fixation of percentage of use of jute packaging material is under challenge and generally, the Court will not decide the percentage of usage of jute packaging material. It is purely an administrative function of the Central Government and is purely an executive decision. It is also stated by the learned Senior counsel that in the decision rendered by the Hon'ble Apex Court in the case of **Tata Iron and Steel Co. Ltd. vs. Union of India and another reported in (1996) 9 SCC, 104,** there was a restriction upon sugar industry for 100% of total production to be packed in jute packaging material which has been held as valid and therefore, the present case is covered by the said judgment and the petitions deserve to be dismissed. The learned Senior counsel has also drawn the attention of this Court

in detail to the minutes of the Standing Advisory Committee and the recommendations of the Cabinet committee on Economic Affairs and the final decision taken by the Central Government and it is pointed out that the Central Government has considered all the factors which are referred to in sections 3 and 4 of the Act of 1987 and once attention of the Central Government has been drawn on these facts, it is enough to uphold the decision taken by the Central Government. Learned Senior Advocate Mr. Soparkar has also relied upon several decisions which are as under:

(1)Principal, Madhav Institute of Technology and Science vs. Rajendra Singh Yadav and others reported in AIR 2000 SC, 2487.

(2)Chairman and M.D.,B.P.L.Ltd. vs. S.P.Gururaja and others reported in AIR 2003 SC 4536.

(3)K.Nagaraja and others vs. State of Andhra Pradesh and another reported in AIR 1985 SC 551.

(4)T.Venkata Reddy and others vs. State of Andhra Pradesh reported in (1985) SCC 198

(5)G.C.Kanungo vs. State of Orissa reported in (19950 SCC 96.

From the aforesaid decisions, it is pointed out that it is not open for this Court to alter the decision taken by the Central Government as the same is the policy decision, especially when the provisions of sections 3 and 4 of the Act of 1987 have been complied with.

9. I have also heard the learned advocate Mr. Amar Dave for the respondent in Special Civil Application No. 19593 of 2006 who has mainly submitted that there are inbuilt checks upon the decision taken by the Central Government, especially looking to the provisions of sub-section (2) of section 3 of the Act of 1987. He has also relied upon the decision of the Hon'ble Supreme Court in the case of **Dalmiya Cement (Bharat) Ltd. vs. Union of India and others reported in (1996)10 SCC, 104** and has also adopted the arguments canvassed by the learned counsel Mr. S.N.Shelat, Mr. S.I.Nanavati and Mr. Soparkar and pointed out that judicial review of the policy decision taken by the Central Government is not permissible and hence the petition deserves to be quashed and set aside.

10. Having heard the learned counsels for both the sides and looking to the facts and circumstances of the case, the provisions of the Act of 1987, judicial pronouncements as referred to hereinabove, and for the following facts and reasons, in my opinion, the notification dated 24th July, 2006 is ultra vires the Act of 1987 and deserves to be quashed and set aside:

Necessary provisions of Law:

(i) Sections 3 and 4 of The Jute Packaging Materials (Compulsory use in Packing Commodities) Act 1987 read as under:

> ***"3. Power to specify commodities which are required to be packed in jute packaging material-*** *(1) Notwithstanding anything contained in any other law for the time being in force, the Central Government may, if it is satisfied, after considering the recommendations made to it by the Standing Advisory Committee, that it is necessary so to do in the interest of production of raw jute and jute packaging material, and of persons engaged in the production thereof, by order published in the Official Gazette, direct, from time to time, that such commodity or class of commodities or such percentage thereof, as may be specified in the order, shall, on and from such date, as may be specified in the order, be packe for the purposes of its supply or distribution in such jute packaging material as may be specified in the order:*

Provided that until such time as the Standing Advisory Committee is constituted under section 4, the Central Government shall, before making any order under this sub-section, consider the matter specified in sub-section (2) of section 4 and any order so made shall cease to operate at the expiration of three months from the date on which the Standing Advisory Committee makes its recommendations.

(2)Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following he sessions or the successive sessions aforesaid, both Houses agree in making any modification in the order or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the order.

4. Constitution of Standing Advisory Committee- *(1) The Central Government shall, with a view to determining the commodity or class of commodities or percentages thereof in respect of which jute packaging material shall be used in their packing, constitute a Standing Advisory committee consisting of such persons as have, in the opinion of that Government, the necessary expertise to give advice in the matter.*

(2) The Standing Advisory Committee shall, after considering the following matters, indicate its recommendations to the Central Government, namely-
(a) the existing level of usage of jute material;

(b) the quantity of raw jute available;
(c) the quantity of jute material available;
(d) the protection of interests of persons engaged in the jute industry and in the production of raw jute;
(e) the need for continued maintenance of jute industry;
(f) the quantity of commodities which, in its opinion, is likely to be required for packing in jute material;
(g) such other matters as the Standing Advisory Committee may think fit."

The whole matter is based upon these two sections of the aforesaid Act coupled with the fact of frequently referred common minimum programme of UPA Government and the jute policy of the year 2005.

(ii) <u>Import due to over-protection</u>:

It is contended by the learned counsel for the petitioners that the Act came into force from 1987. Immediately in the very same year, figures of import was 54 tonnes as per para-6 of the judgment reported in (1996) 10 SCC, 104. This import has increased in the year 2005 and has gone to approximately 1,15,600 tonnes. This huge quantity of jute is being imported. The domestic manufacturing is capable enough to cater to the domestic need. The over-protection because of 100% usage of jute material has reached to the aforesaid situation. It

is stated by the learned counsel for the petitioners that such a huge quantity of import is a vital factor to be taken into consideration prior to 100% usage of jute material. I am in agreement with the argument advanced by the learned counsel for the petitioners. This vital factor has not been considered by the Central Government while brushing aside the advice given by the statutorily constituted body, namely Standing Advisory Committee under section 4 of the Act of 1987.

(iii) Saving to Government by Rs. 450 crores

Looking to the recommendations of the Department of Food and Public Distribution, as per the members of the Standing Advisory Committee constituted under section 4 of the Act of 1987, it has been stated that if 50% of the total production of food grains is ordered to be packed in jute packaging material, it will save Rs. 475 crores of the Government of India. This is only for food grains. If sugar is added, figure of saving in terms of crores of rupees savings will be increased. Public exchequer is over-burden because of 100% usage of jute packaging material. This also affects the

decision taken by the Central Government.

(iv) The view of Jute Commissioner who is also one of the members of the Standing Advisory Committee as constituted under section 4 of the Act of 1987. It reads as under:

> ***"6.2. Jute Commissioner:***
>
> *The Jute Commissioner furnished a brief outline of the present raw jute and jute products scenario in the country. He stated that the production of raw jute over the past five years has varied from 75 lakh bales in 2004-2005 (Jute year) to a high of 110 lakh bales in 2002-2003. It is estimated that raw jute production 85-90 lakh bales during 2005-2006. Sowing of seeds for jute and mesta has started in different parts of the country. According to preliminary estimates of the Jute Advisory Board, the area under cultivation will g up by 18-20% due to favourable market prices. If weather conditions will be favourable, the production of raw jute will exceed 100 lakh bales during jute season 2006-2007. I is estimated the production of jute goods during 2005-2006 will be 15.82 lakh M.T. Jute sacks constitute nearly 68-70% of total production of jute goods. With opening balance of 14 lakh bales, domestic production of 90 lakh bales and import of 7 lakh bales, the total supply of raw jute during 2005-2006 will be 111 lakh bales. Total consumption of raw jute estimated at 981 lakh bales, leaving a closing stock of 13 lakh bales for the beginning of the next jute season i.e. 2006-2007. The consumption of Jute bags for packaging food grains and sligar is around 9 lakh MT which is 57% of production of all jute goods (15.82 lakh MT) and 83.64% of total production of jute bags (10.76 lakh MT) in the country.*

> *The Jute Commissioner was of the opinion that the jute industry at the present juncture, needs the support of the government in ensuring reasonable market demand for the jute products in the country. However, such protection need not be absolute in the form of compulsory packaging to the extent of 100% for food grains and sugar. He further stated that in the past, less than 100% reservation for jute goods has not impacted the jute industry adversely."*
>
> *(Emphasis supplied)*

Similarly,the Department of Chemicals and Petrochemicals has also given their detailed view before the Standing Advisory Committee. As per their view also, 75% should be packed in jute packaging material.

> **"6.4. Department of Chemicals and Petrochemicals.**
>
> *i) The representative of the Department of Chemicals and Petrochemicals broadly agreed with the contentions and arguments submitted by the Chemical and Petrochemicals Manufacturers Association.*
> *ii) He argue that no industry should get perpetual protection from the Government as such protection breeds inefficiency and higher cost to the society. Therefore, the degree of compulsory packaging for food grains and sugar should be reduced progressively from the present level of 100%.*
> *iii) Import of Jute and Jute products have witnesses and increasing trend in recent years. India has imported 1.19 MT of raw jute during the Jute year 2005-2006 which is an increase of 65.62% over the previous year. Similarly, India imported 72000 MT of Jute products during 2005-2006*

which is an increase of 210% over the previous year. The JPM Act, 1987 was enacted primarily to protect the interest of Jute farmers of India. However, to supplement domestic production, imports of raw jute and jute products are increasing over the years. In view of the surge in import of jute and jute products, as well as considering the advantages of alternative packaging materials like plastic woven sacks, phased dilution of compulsory packaging of sugar and food grains from the current level of 100% may be considered. For the Jute Year 2006-2007, the level of reservation for food grains an sugar should be 75%."

(Emphasis supplied)

Likewise, other departments have also strongly recommended for the reduction in the percentage for usage of jute material. Most of the members of the Standing Advisory Committee have recommended for substantial reduction in the usage of jute packaging material and therefore, recommendation of the Standing Advisory Committee was for 70% and 75%for food grains and sugar respectively. The recommendation of the Standing Advisory Committee reads as under:

"7. Recommendations.

7.1 After detailed deliberations and due consideration, the members felt that the compulsory packaging could be reduced to a certain extent. This reduction may lead to improve efficiency, modernisation and diversification of jute products. Moreover, it would provide the necessary cushion against disruption of supply, if any, due to factors like labour problems and averse

weather conditions. Some members felt that in case of shortages in supply of raw jute, the 100% compulsory packaging for food grains and sugar may lead to import from other countries at the cost of other substitute packaging materials available in the country. Moreover, a reduction from 100% compulsory packaging will also provide an opportunity to the procurement agencies of food grains and the managers of levy sugar to reduce overall subsidy on account of public distribution system in the country.

7.1 On the basis of the above considered views and submissions made by the representatives of various State Governments, and user and produce industries, a broad consensus emerged among the members of the SAC that the following levels of reservation may be recommended for the commodities mentioned against their names for the Jute Year 2006-2007 (15th July 2006 to 30th June, 2007).
Food grains : 75%
Sugar : 70%

7.2 The SAC further recommended that the Ministry of Textiles should be empowered to relax these provisions upto a maximum of further 20% for sugar and food grains in case of any disruption in supplies. Small consumer packs of ten kilograms and below, and export packing in respect of food grains and sugar should continue to be exempted from compulsory packaging. "Sugar fortified with vitamins" should also be exempted from the purview of the compulsory packaging norms."
(Emphasis supplied)

All the aforesaid views given by different constituents of the committee made a stream of strong view and was culminated as advised by this Statutory constituted Committee. This advice has been brushed aside by the Central Government while issuing

impugned notification keeping in mind extraneous factors.

(v) Adverse impact of batching oil used in jute packaging material:

It has been stated in detail by the Jute Commissioner (Annexure “I” to the memo of the petition) that batching oil used in jute packaging material contaminates edible products through contact with packaging material resulting in direct impact upon the health of the persons who are consuming food grains and sugar. In monsoon seasons also, it absorbs moisture and contaminates the edible products packed in jute packaging material. In response to this, it is stated by the learned advocate for the respondent Union of India that recently the Government has restricted 3% usage of batching oil in the production of jute packaging material. Therefore, there will not be any contamination. Looking to the facts and circumstances of the present case, I am of the opinion that the jute packaging material contains batching oil and it affects the health of the people at large and it contaminates food grains. For export of the food grains and sugar, jute packaging material

is not compulsory, meaning thereby, for the citizens and residents of this country, jute packaging material, though it contaminates food products, 100% of total production is required to be packed in a jute packaging material. This is not in the public interest.

(vi) <u>Scope of judicial review</u>:

It is repeatedly contended by the learned counsel for the respondent Union of India that the decision taken by the Central Government vide notification dated 24th July, 2006 is a policy decision and is a legislative action and as the said decision is a legislative decision in nature, it is not amenable to judicial review. This contention is not accepted by this Court for the reason that the decision taken by the Central Government is not a policy decision but it is a decision taken in pursuance of the parent Act, namely The Jute Packaging Materials (Compulsory use of Packaging Commodities) Act, 1987. It is not even a legislative Act. While taking decision under sub-section (1) of section 3 of the Act of 1987, the Central Government must keep in mind the factors required to be

considered as per sections 3 and 4 of the Act of 1987. If the decision taken by the Central Government is de hors the Act of 1987, this Court has all power to check correctness of the decision making process and to check whether the factors referred to in the Act of 1987 have been considered or not. If extraneous factors have been considered while taking the decision under section 3(1) of the Act of 1987, this Court can judicially review the said decision and can quash the same. It has been decided by the Hon'ble Supreme Court in the case of **Indian Express Newspapers (Bombay) Private Ltd. And others vs. Union of India and others reported in AIR 1986, SC, 515** and more particularly in paragraphs 71 and 73 as under:

> *"71. We shall assume for purposes of these cases that the power to grant exemption under Section 25 of the Customs Act, 1962 is a legislative power and a notification issued by the Government thereunder amounts to a piece of subordinate legislation. Even then the notification is liable to be questioned on the ground that it is an unreasonable one. The decision of this Court in Municipal Corporation of Delhi vs. Birla Cotton, Spinning and Weaving Mills, Delhi (1968) 3 SCC 251: (AIR 1968 SC 1232) has laid down the above principle. In that case Wanchoo, C.J. while upholding certain taxes levied by the Corporation of Delhi under Section 150 of the Delhi Municipal Corporation Act, 1957 observed thus:*
> *" Finally there is another check on the power of the Corporation which is inherent in the matter of exercise of power by*

subordinate public representative bodies such as Municipal Boards. In such cases if the act of such a body in the exercise of the power conferred on it by the law is unreasonable, the courts can hold that such exercise is void for unreasonableness. This principle was laid down as far back as 1898 in Kruse vs. Johnson (1898) 2 QBD 91."

73. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say " Parliament never intended authority to make such rules. They are unreasonable and ultra vires." The present position of law bearing on the above point is stated by Diplock L.J. In Mixnam Properties Ltd. vs. Chertsey U.D.C. (1964) 1 QB 214 thus:-

" The various grounds upon which subordinate legislation has sometimes been said to be void....can, I think, today be properly regarded as being particularly applications of the general rule that subordinate legislation, to be valid, must be shown to be within the powers conferred by the statute. Thus the kind of unreasonableness which invalidates a bye-law is not the antonym of "reasonableness" in the sense of which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a court would say : Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires...' If the

courts can declare subordinate legislation to be invalid for 'uncertainty', as distinct from unenforceable....this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain..."

(Emphasis supplied)

It has been held by the Hon'ble Supreme Court in the case of State of **NCT of Delhi and another vs. Sanjeev Alias Bittoo reported in 2005 (5) SCC, 181** and more particularly in paragraphs 15, 16 and 17 as under:

"15. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See State of U.P. vs. Renusagar Power Co.). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor de Smith in his classical work Judicial Review of Administrative Action, 4th Edition at pp 285-87 states the legal position in his own terse language that the relevant principles formulated by the courts may be broadly summarised as follows: The authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each

individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to do the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.

16. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troupes, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the courts to assert their power to scrutinies the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions vs. Minister for the Civil Service (Commonly known as CSSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See CIT vs.

Mahindra and Mahindra Ltd.). The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous and John Alder in their book Applications for Judicial Review, Law and Practice thus:

> *" There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in Council of Civil Service Unions vs. Minister for the Civil Service this is doubtful. Lords Diplock, Scarman and Roskil appeared to appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principles, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."*
>
> *(Also see Padified vs. Minister of Agriculture, Fisheries and Food.)*

17. <u>The court will be slow to interfere</u>

in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.'

(Emphasis supplied)

It has also been held by the Hon'ble Supreme Court in the case of **Bombay Dyeing and Manufacturing Co. Ltd. (3) vs. Bombay Environmental Action Group and others reported in (2006) 3 SCC, 434** and more particularly paragraphs 107, 114, 118 and 119 as under:

"Scope of Judicial review vis-a-vis legislative policy.

104. A policy decision, as is well known, should not be lightly interfered with but it is difficult to accept the submissions made on behalf of the learned counsel appearing on behalf of the appellants that the courts cannot exercise their power of judicial review at all. By reason of any legislation, whether enacted by the legislature or by way of subordinate legislation, the State gives effect to its legislative policy. Such legislation, however, must not be ultra vires the Constitution. A subordinate legislation apart from being intra vires the Constitution, should not also be ultra vires the parent Act under which it has been made. A subordinate legislation, it is trite, must be reasonable and in consonance with the legislative policy as also gives effect to the purport and object of the Act and in good faith.

107. The parameters of judicial review in relation to a policy decision would depend

> *upon the nature as also the scope and object of the legislation. No hard-and-fast rule can be laid down therefor. The court normally would not, however, interfere with a policy decision which has been made by experts in view of the fact that it does not possess such expertise.*
>
> *118. It is interesting to note that the scope of judicial review is not being expanded in different jurisdictions. Even judicial review on facts has been held to be permissible in law. (See Manager, Reserve Bank of India vs. S.Mani, Kinachonepa Coop. Sugar Mills Ltd. vs. Ajit Singh and Cholan Roadways Ltd. vs. G.Thirugnanasambandam.)*
>
> *119. In Anil Kumar Jha vs. Union of India it was held that in an appropriate case, the Supreme Court may even interfere with a political decision including an action of the Speaker or the Government of the State although it may amount to entering into a political thicket. (See also Rameshwar Prasad (VI) vs. Union of India.)*
>
> *(Emphasis supplied)*

It has also been held by the Hon'ble Supreme Court in this case that legislative act can be challenged on the ground that the provisions of the parent Act are not complied with. In view of the aforesaid judicial pronouncements, I am of the opinion that the decision taken by the Central Government under sub-section (1) of section 3 of the Act of 1987, is amenable to judicial review. The validity of this decision can be challenged on the ground stated hereinabove, as the provisions of the parent Act, namely Act of 1987 have not been complied with and

the same decision can be taken in judicial review by the Court, in exercise of powers under Article 226 of the Constitution of India.

(vii) If the decision taken by Central Government is to be laid before Parliament, whether it provides any immunity from judicial review, looking to sub-section (2) of section 3 of the Act of 1987?

It has been contended by the learned counsel for the respondent Union of India that as the decision taken by the Central Government under sub-section (1)of section 3 of the Act is required to be laid before the Parliament, the same cannot be challenged in the court of law and the Court cannot upset the decision because of this inbuilt check. They have also drawn the attention of this Court upon the decision of the Hon'ble Supreme Court in the case of **Dalmiya Cement (Bharat) Ltd. Vs. Union of India and others reported in (1996) 10 SCC, 104** and pointed out that once such decision is taken under sub-section (1) of section 3 of the Act and as there is a control by the Parliament, the decision cannot be challenged in the court of law. This contention appears to be attractive at the first instance, but is not accepted by this Court. It has been held by

the Hon'ble Supreme Court in the case of **S.R.Bommai and others vs. Union of India and others reported in AIR 1994, SC, 1918**, relevant para-309 reads as under:

"Judicial Review and Justiciability:

> *"309. Sri Parasaran, learned Counsel for the Union of India urged that inasmuch as the proclamation under clause (1) has been approved by both Houses of Parliament as contemplated by clause (3), the proclamation assumes the character of Legislation and that it can be struck down only on grounds on which a Legislation can be struck down. We cannot agree, Every act of Parliament does not amount to and does not result in Legislation, though Legislation is its main function. Parliament performs many other functions e.g., Election of Speaker and Deputy Speaker, vote of confidence/noconfidence in the Ministry, motion of thanks to the President after the address by the President and so on. One of such functions is the approval of the proclamation under clause (3). Such approval can by no stretch of imagination be called "Legislation". It is not processed or passed as a Bill nor is it presented to the President for his assent. Its legal character is wholly different. It is a constitutional function, a check upon the exercise of power under clause (1). It is a safeguard conceived in the interest of ensuring proper exercise of power under clause (1). It is another matter that in practice the check has not proved effective. But that may not be so in future or for all time to come. Be that as it may, it is certainly not legislation or legislative in character.*
>
> *(Emphasis supplied)*

It has been held by the Hon'ble Supreme Court in the case of **Dai-Ichi Karkaria Ltd. vs. Union of India and others reported in AIR 2000 SC, 1741,**

para-8 thereof reads as under:

> *"8. In Indian Express Newspapers (Bombay) Pvt. Ltd. vs. Union of India (1985) 2 SCR 287: (AIR 1986 SC 515) scope of interference in the notification issued under sub-section 25 of the Customs Act, 1962 is considered. This Court held that power to grant exemption under section 25 of the Customs Act is a legislative power and a notification issued by the Government thereunder amounts to a piece of subordinate legislation, even then the notification is liable to be questioned on the ground that it is an unreasonable one inasmuch as a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of grounds on which plenary legislation can be challenged; (1) that it does not conform to the statute under which it is made (ii) that it is contrary to some other statute inasmuch as subordinate legislation must yield to plenary legislation (iii) that it is unreasonable in the sense that it is manifestly arbitrary. The embargo of arbitrariness is embodies in Article 14 of the Constitution. An inquiry into the vires of delegated legislation must be confined to the ground on which the plenary legislation may be questioned, except that subordinate legislation cannot be questioned on the ground of violation of the principle of natural justice on which administrative action may be questioned. In cases where power vested in the Government is a power has got to be exercised in public interest, as is the case in the present case, the court may require the Government to exercise that power in a reasonable way in accordance with the spirit of the Constitution. The mere fact that a notification issued under section 25 of th Customs Act is required to be laid before Parliament under section 159 of th Customs Act does not make any substantial difference as regard the jurisdiction of the court to*

> *pronounce on its validity. Section 25 of the Customs Act under which notifications are issued confers a power on the Central Government coupled with a duty to examine the whole issue in the light of public interest. If the Central Government is satisfied that it is necessary in the public interest so to do, it may exempt generally either absolutely or subject to such conditions, good of any description, from the whole or any part of the customs duty unenviable thereon. Power exercisable under section 25 of the Customs Act is no doubt discretionary, but it is not unrestricted. The pattern of the law imposing customs duties and the manner in which it is operated to a certain extent exposes the citizens who are liable to pay customs duties to the vagaries of executive discretion. While Parliament has imposed duties by enacting the Customs Act and the Customs Tariff Act, 1975, the executive Government is given wide power by section 25 of the Customs Act to grant exemption from the levy of customs duty. It is ordinarily assumed that while such wide power is given to the Government, it will consider all relevant aspects governing the question whether exemption should be granted or not."*
>
> *(Emphasis supplied)*

It has been held by the Hon'ble Supreme Court in the case of **Bharathidasan University and another vs. All India Council for Technical Education and others reported in AIR 2001, SC, 2861** and especially in para-14 thereof as under:

> *"14. The fact that the regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations are confined to certain*

> *limits and made to flow in a well defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the Courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that regulations made under section 23 of the Act have "Constitutional" and legal status, even unmindful of the fact that anyone or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the regulations in question, which the AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind an University in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions."*
>
> *(Emphasis supplied)*

Thus, merely because the decision is to be placed before the Parliament it does not give any more sanctity or immunity or authority or validity to the decision taken by the Central Government. It is a myth to state that such type of decision taken by the Central Government gives immunity, from the judicial review. There are several other decisions rendered by the Hon'ble Supreme Court. However, I am avoiding to cite those judgments as there is no need to over-burden this judgment.

Thus, the argument that it is protected by sub-section(2) of section 3 is not helpful to the petitioners. It is also an admitted fact that the decision taken on 24th July, 2006 is not laid before the Parliament though it was in session, upto 30.8.2006. Till today, it has not been laid before Parliament.

(viii) Factors to be taken into consideration before taking the decision under sub-section (1) of section 3 of the Act of 1987.

Greater the restriction, more the need for strict scrutiny by the Courts.

Looking to the scheme of the Act, the Standing Advisory Committee has been constituted under section 4 of the Act of 1987, has to choose the commodities and has to fix the percentage of jute packaging material to be used in packing of tho se commodities. This committee shall consider the following matters.

(i)The existing level of usage of jute material.

(ii) The quantity of raw jute available.

(iii) The quantity of jute material available.

(iv) The protection of interests of persons engaged in jute industry and in the production of raw jute.

(v) The need for continued maintenance in the jute industry.

(vi) The quantity of commodity which is likely to be required to be packed in jute material.

Keeping in mind all these factors and such other factors which the committee thinks fit and proper, it will give its recommendations to the Central Government which the Central Government has to consider and it must satisfy that upon considering the recommendations of Standing Advisory Committee, it is necessary in the interest of production of raw jute, the jute packaging material and all persons engaged in the production thereof, by order, it can direct, from time to time, such commodity or such percentage thereof to be packed for supply and distribution, in such jute packaging material as may be specified by the order, as per sub-section (1) of section 3 of the Act, 1987.

These are the limitations for the usage of powers under sub-section (1) of section 3 of the Act of 1987. As stated above, out of total members of the

Standing Advisory Committee, most of the members have recommended dilution of percentage of usage of jute packaging material. Upon perusal of the original files, it appears that finally, because of commitment to UPA Government and last year's Jute policy, 100% of usage of jute packaging material for both food grains and sugar has been fixed.

Looking to para-8 of the note of CCEA, it is clear that extraneous considerations have weighed. The said para-8 reads as under:

> ***"8. Approval sought from the CCEA:***
>
> *In view of the commitment of UPA Government to National Common minimum Programme and in continuation of the policy laid down during the last Jute Year, CCEA may approve the following:*
> *The compulsory packing for food grains and sugar in jute bags shall be as follows for the year 2006-2007 (July-June):*
>
> *Food grains : 100%*
> *Sugar : 100%"*
>
> (Emphasis supplied)

Looking to the provisions of section 3 of the Act of 1987, every year such decision is required to be taken. It is not that once the decision is taken, it is applicable for all years to come.

Thus, looking to the aforesaid paragraph-8, the factors which have weighed with the Central Government while taking decision under sub-section (1) of section 3 of the Act, 1987 are as under:

(i)Commitment to UPA Government's national common minimum programme, and

(ii) In continuation of the jute policy of the year 2005.

Neither of the aforesaid factors are relevant factors looking to the provisions of sections 3 and 4 of the Act of 1987. Hence, the decision taken under sub-section (1) of section 3 of the Act of 1987 is dehors the provisions of the Act of 1987.

The learned counsel for both the sides have taken this Court in detail, to the common minimum programme as well as jute policy of the year 2005. There is nothing in these two documents which prescribes about 100% usage of jute packaging material.

It is also contended by the learned counsel for the respondent Central Government that the affidavit-in-reply filed by the Union of India

reveals additional grounds also and it also reveals the benefit of use of jute material. These benefits have been stated in para (F) in the affidavit-in-reply filed by Under Secretary, Ministry of Textiles, Union of India, New Delhi, which are as under:

> *"f. In order to decide the norms of packaging for the jute year 2006-2007, the meeting of SAC was held on 5.5.2006 under the Chairmanship of Secretary (T). It was attended by various stakeholders including representatives of the concerned Government Departments, Indian Jute Mills Association, Indian Sugar Mill Association, Chemicals and Petro-chemical Manufacturers Association, All India Flat Tape Manufacturers Association, National Federation of Cooperative Sugar Ltd., and State Government etc. The SAC discussed the matter with all the stakeholders regarding the norms of packaging for the jute year 2006-2007 (1st July, 2006 30th June, 2007). The recommendation of the SAC was sent to the Central Government (Cabinet Committee on Economic Affairs) alongwith a detailed Note for approval. The Central Government after considering various factors finally decided the norms of packaging for the jute year 2006-07. Based on the decision of the Central Government, the respondent no. 2 issued an order dated 24.7.2006 through a Gazette Notification vide S.O. No. 1170(E) dated 24.7.2006. As per this order, 100% production of Food grains and sugar were required to be compulsorily packed in the jute material during the jute year 2006-2007. The validity of this order expires on 30.6.2007. A copy of the order dated 24.7.2006 is annexed herewith and marked as Annexure "B"."*

Such type of benefits had been contemplated and

therefore, jute bags are always preferred to plastic bags. This contention is also not accepted by this Court mainly for the reason that the affidavit-in-reply cannot supplement the reasons, otherwise all the old orders which are defective will get strength by affidavit-in-reply. It has been decided by the Hon'ble Supreme Court in the case of **Hindustan Petroleum Corporation Ltd. vs. Darius Shapur Chenai and others reported in (2005) 7 SCC, 627** and more particularly in paragraphs 24, 25, 26 and 27 as under:

> *"26. Yet again in Mohinder Singh Gill this Court observed: (SCC p.417,para 9)*
> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J in Gordhandas Bhanji."*
>
> *27. Referring to Gordhandas Bhanji it was further observed : (SCC p. 417, para 8)*
>
> *"Orders are not like old wine becoming better as they grow older."*
> *(Emphasis supplied)*

It is also contended by the learned counsel for the respondent Union of India that Standing Advisory Committee's report is merely an advice and is not binding to the Central Government. It is true that the report given by the statutory committee appointed under section 4 of the Act of 1987 is not binding to the Government, but the question before this Court is whether extraneous factors have been considered by the Central Government for fixing 100% (by brushing aside advice given by SAC) of total production in food grains and sugar industries to be packed in jute packaging material. Looking to the reasons given by the Central Government for brushing aside the advice given by the Standing Advisory Committee, namely their commitment to UPA Government and Jute policy of the year 2005, I am of the opinion that they are extraneous considerations. None of them prescribes 100% usage of Jute packaging material. Looking to the provisions of section 3(1) of the Act of 1987, every year is a separate year, therefore, what is just, for last year, on the basis of last year's Jute Policy, cannot be mechanically followed for the current year i.e. 2006-2007, but need of 100% ought to be evaluated independently of last year's percentage or policy. Every year,the whole exercise

is to be undertaken afresh, as stated in section 4 of the Act and thereafter, final decision can be taken under sub-section (1) of section 3 of the Act of 1987. Therefore, it is rightly observe in paragraphs 31 and 32 of the judgment in the case of **Dalmiya Cement (Bharat) Ltd. And another vs. Union of India and others reported in (1996) 10 SCC, 104** as under:

> *"31. Equally, the competing right to carry on trade or business guaranteed to a citizen or person is also to be protected. In the clash of competing rights of socio-economic justice of the producers of the agricultural commodities and of the individual right of a citizen to carry on trade or business, the latter yield place to the paramount social right. However, as rightly pointed out by the counsel, a balanced view has to be struck by the Central Government in directing use of jute packaging material at the percentage of the jute bags to be used for compulsory packing of the commodities which is subject to parliamentary control and approval. Parliament is the spokesman of the people where the need is felt most acute. When the orders are passed under section 3 are subject to modification by Parliament, Parliament preserved to itself a great salutary control over executive exercise of power under section 3(1). It is such a valuable public protection and safeguard kept with Parliament itself. Parliament would be the best judge to discuss in each House as to what extent competing interests of the agricultural industry and the industry involved in commercial products need to be protected and would guide the Central Government appropriately by resolution or otherwise. When Parliament debates on the subject, it focuses its attention on all its constituents and it*

> *would be open to debate on the subject by participants from all the members of Parliament and political parties and of shades of opinion. Parliament is entitled to direct the Central Government to place on the floor of each House the necessary factual material for discussion. They are the best judges to direct the Central Government to act on their advice in a particular way, based on the existing factual material. Parliament is empowered to overrule the order of the Central Government under section 3(1) by disapproval."*
>
> *(Emphasis supplied)*

Similarly in para-32 of the said judgment, it has been observed as under:

> *"<u>It is a question of fact to be considered in each case</u> as to what percentage is required to be used; it is primarily for the Central Government to decide as executive policy....."*
>
> *(Emphasis supplied)*

Thus, what may be true for one year in fixing the percentage of usage of jute bags may not be true for the next year. Every year, this percentage has to be fixed by the Central Government keeping in mind parameters as stated in sections 3 and 4 of the Act of 1987 and keeping in mind the aforesaid observations in paragraphs 31 and 32 of the judgment, as stated hereinabove. Wherever, there is a total prohibition, more care and need for strict scrutiny by the Court is required. Looking to the advice given

by most of the members of the Standing Advisory Committee and looking to the percentage suggested by the Standing Advisory Committee, namely, 70% and 75% for sugar and food grains, it was a suggestion by most of the departments in Standing Advisory Committee to reduce percentage of usage of jute bags. Looking to the decision taken by the Central Government and note for Cabinet Committee on Economic Affairs dated 26th June, 2006 for mandatory use of jute in packing for the jute year 2006-2007, the only reason given in paragraph 8 is commitment to UPA Government and in continuation of the policy laid down during the last jute year. The report given by the Standing Advisory Committee was brushed aside and 100% of the total production of food grains and sugar was ordered to be packed in jute packaging material. These two factors have been considered which are not at all referred in sections 3 and 4 of the Act of 1987. Therefore, they are extraneous considerations. Thus, whenever delegated legislation is running against the parent Act, always such decisions are amenable to judicial review and in view of these facts, I hereby quash and set aside the notification dated 24th July, 2006 which is at Annexure “A” to the memo of the petition.

11. It is also contended by the learned counsel for the respondents that the petitioners have no locus standi especially of petition bearing Special Civil Application No. 19594 of 2006. This contention is also not accepted by this Court mainly for the reason that the members of the petitioner association are carrying on their business within State of Gujarat. It is a registered Association. List of members is also given and their members are directly affected by the decision at Annexure “A”. It is vehemently contended by the respondents that the petitioner is working at New Delhi and therefore, the petition is not tenable at law before this Court. This contention is also not accepted by this Court mainly for the reason that not residence but, the cause of action is to be seen. Part of the cause of action has arisen within territorial jurisdiction of this Court. The members of the petitioner association are in the State of Gujarat and list of such members has been given and by the notification at Annexure “A”, they are directly affected. Therefore, residences of the petitioners are not to be seen, but cause of action is to be seen and if part of the cause of action has arisen within territorial

jurisdiction of this Court, as per sub-article (2) of Article 226 of the Constitution, this Court has territorial jurisdiction and in my view, the petition is tenable at law.

12. It is contended by the learned Senior Advocate Mr. Soparkar that looking to the prayer of this petition, even the petitioners have prayed for 70% and 75% reservation for sugar and food grains industry and therefore, there is a need for reservation even as per the petitioners and what percentage is to be fixed, is a look out of the Central Government and this Court will not take such a decision in judicial review. This contention is also not accepted by this Court mainly for the reason as stated hereinabove, especially when the factors which have been considered by the Central Government are extraneous considerations. The reasons given for brushing aside advice of the Standing Advisory Committee for 70% and 75% for sugar and food grains industries and for fixing 100% of the total production for sugar and food grains industry, is based upon the commitment of UPA Government and policy for the last year that is, jute year 2005. These reasons are de hors, the sections 3 and 4 of

the Act, 1987. It is also contended by the learned counsel for the respondents that whole case is covered by the decision rendered by the Hon'ble Supreme Court in the case of **Dalmiya Cement's case (Supra) reported (1996) 10 SCC, 104.** This contention is also not accepted by this Court mainly for the reason that effect of batching oil upon consumers and contamination of food products in the jute bags was never argued in Dalmiya's case. Secondly, for the reason that every year is a separate year and therefore, what is fixed by the Central Government in the year 1987 is not valid for all time to come even after passage of two long decades. Thirdly for the reason that it has been observed in paragraphs 31 and 32 of the judgment that the Central Government shall keep in mind the competing right to carry on trade or business guaranteed to citizen or person is also to be protected (para-31) and it is a question of fact to be considered in each case as to what percentage is required to be fixed. (para 32). Fourthly for the reason that the whole case of Dalmiya was of the year 1987 reservation. The Act came into force in the year 1987. The Standing Advisory Committee advised for 100% production to be packed in jute packaging

material. (para 29 of the judgment). Whereas in the present case, SAC's advice is 70% and 75%. Fifthly for the reason that looking to the quantum of import, it was 54 tonnes from Bangladesh, Nepal and other neighbouring countries (para-6 of the judgment). Whereas, in the present case, the import is 1,55,660 tonnes of jute from neighbouring countries. Sixthly, for the reason the factors which ought to have weighed with the Central Government before issuing the notification under sub-section (1) of section 3 of the Act are referred in sections 3 and 4 whereas, in the facts of the present case, the extraneous considerations have weighed with the Central Government.

13. Judgments cited by the counsels for the respondents are not, helpful to them, looking to the aforesaid reasons and judicial pronouncements. Therefore, the contentions raised by the learned counsel for the respondents that this case is covered by the aforesaid judgment is not accepted by this Court.

14. It has been contended by the learned counsel for the petitioners that the respondents have failed

to carry out the interim direction given by this Court and therefore, contempt of Court proceedings may be initiated against the respondents. This contention is not accepted by this Court mainly for the reason that final hearing is already fixed immediately. Looking to the short tenure of the notification under challenge, that is, dated 24th July, 2006 and also keeping in mind the application preferred by the Union of India for modification of the order passed by this Court, therefore, this Court is not inclined to initiate any contempt proceedings against the respondent Union of India.

15. The question now, therefore, may arise is that if the notification is quashed, will there be a vacuum so far as usage of jute bags for food grains and sugar industry is concerned. A hint has been given by the proviso to section 3 of the Act of 1987 which reads as under:

> *"3. .....Provided that until such time as the Standing Advisory Committee is constituted under section 4, the Central Government shall, before making any order under this sub-section, consider the matters specified in sub-section (2) of section 4, and any order so made shall cease to operate at the expiration of three months from the date on which the Standing Advisory Committee*

makes its recommendations.”

Thus, in transition, as per Standing Advisory Committee's report, I hereby direct that 70% of total production of sugar and 75% of total production of food grain industry is required to be packed in jute packaging material. The Central Government is hereby directed to decide afresh by following the provisions of section 3 of the Act of 1987 and keeping in mind the factors under the Act of 1987 and the parameters which are referred in the aforesaid judgment, to fix percentage of total production, and the commodities to be packed in jute packaging material. This exercise shall be completed by the Central Government, as expeditiously as possible and practicable. Necessary notification shall be published by the Central Government. Rule made absolute accordingly in each petition with no order as to costs. As the main petitions are allowed, civil applications in each of the petitions are disposed of with no order as to costs.

(D.N.PATEL,J)

16. At this stage, after pronouncement of the judgment, the learned Senior Advocate Mr. S.I.Nanavati has prayed for stay of implementation and execution of this judgment. The learned counsel for the petitioner has opposed this request. Looking to the reasons stated hereinabove, the facts of the case and the judicial pronouncements enumerated above, I am not inclined to grant stay of operation and implementation of this judgment. The request is therefore, not acceded.

(D.N.PATEL,J)

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